IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 78 of 2006
In
COMPANY APPLICATION No. 25 of 2006
With
COMPANY PETITION NO. 79 of 2006
In
COMPANY APPLICATION NO. 24 OF 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

M/S BHAGWATI SPICES AND FOODS EXPORTS PVT. LTD. - Petitioner(s) & Another.

==========

Appearance :
MR MRUGESH JANI for Petitioner(s) : 1,
MR PURVISH J MALKAN for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 17/11/2006

ORAL JUDGMENT

Both these Company Petitions are filed for considering and sanctioning the Scheme of Amalgamation of Bhagwati Spices and Foods Exports

Pvt.Ltd., [Transferor Company] with Shree Bhagwati Flour and Foods Private Limited [Transferee Company] under the provisions of Section 391 to 394 of the Companies Act, 1956.

2. It is submitted that respective Board of Directors of the Companies decided to amalgamate Transferor Company with Transferee Company. It is submitted that the Transferee Company and the Transferor Company are having similar objects and/or objects which can more effectively, more economically and conveniently be combined with objects of the Transferee Company. It is further submitted that the Transferee Company and the Transferor Company are under the same group of management and are having their respective Registered Officers in adjacent premises of on the same plot of land. It is further submitted that amalgamation of both the Companies would broaden the capital base of the resultant unit which can diversify into various other profitable

businesses keeping in mind the change in economic and business conditions and particulars in India. It is further submitted that amalgamation of the Companies would substantially reduce duplication of several overhead expenses and formalities and will lead to economic and administrative management costs improving overall profitability. It is further submitted that amalgamation of Transferee Company and Transferor Company would also help improve profitability by improving efficiency and economic viability of the resultant undertaking as it will have the advantages of large scale of financial management and more resources will be available for the activities of the new undertaking. It is further submitted that in the combined managerial and financial resources would enhance the capability of the resultant unit to invest in larger and sophisticated projects to ensure rapid growth and would consolidate the strategic strength of the amalgamated Company. It is further submitted

that amalgamation will be advantageous to both the companies, their respective shareholders and all others concerned.

3. Transferor Company preferred Company Application No. 25 of 2006 and the Transferee Company preferred Company Application No. 24 of 2006 for dispensing with meeting of the shareholders. Along with its Company Application No. 24 of 2006, Shree Bhagwati Flour and Foods Pvt.Ltd., [Transferee Company] filed written consent of all shareholders signifying their consents and approval to the proposed Scheme of Amalgamation and having filed Written Consent of all the shareholders, the Transferee Company prayed for dispensation of convening meeting of its shareholders to consider and if thought fit to pass appropriate resolution approving the proposed Scheme of Amalgamation. By order dated 31.1.2006, learned Single Judge of this Court [Coram: Mr. R.S. Garg, J.] dispensed with

convening and holding of meeting of shareholders of Shree Bhagwati Flour and Foods Pvt.Ltd [Transferee Company].

3.1. Along with Company Application No. 25 of 2006, Bhagwati Spices and Foods Exports Pvt.Ltd., filed Written Consent of its shareholders, all its Unsecured Creditors and lone Secured Creditor signifying their respective consents and approval to the proposed Scheme of Amalgamation. Having filed Written Consent of all its shareholders, Unsecured Creditors and lone secured creditor, Bhagwati Spices and Foods Exports Pvt.Ltd [Transferor Company] prayed for dispensation of convening the meeting of its shareholders, unsecured creditors and loan secured creditor to consider and if thought fit to pass appropriate resolution approving proposed Scheme of Amalgamation. The learned Single Judge of this Court [Coram: Mr. R.S. Garg, J.] by order dated 6.2.2006 dispensed with convening and holding of

meeting of shareholders, unsecured creditors and lone secured creditor of the Transferor Company, Bhagwati Spices and Foods Exports Pvt.Ltd.

4. Both these petitions, namely Company Petitions No. 78 of 2006 and 79 of 2006 were admitted by this Court and in both the petitions, advertisements were directed to be issued, once in “Indian Express” [an English language daily] and once in “Jansatta” [a Gujarati language daily] and publication in Government Gazettes were dispensed with. It is reported that both the Companies published newspaper advertisements as directed by this Court and they have been published in both the cases in “Indian Express” and “Jansatta”, both dated 30th June 2006 and separate affidavits of publication of advertisements have been filed by both the Companies. No objection has been received by this Court pursuant to the said advertisement.

5. In case of Bhagwati Flour (the Transferee

Company), notice was directed to be issued to the Regional Director pursuant to the provisions of Section 394A of the Companies Act, 1956. In case of Bhagwati Spices (the Transferor Company), notices were directed to be issued to the Regional Director as well as to the Official Liquidator. The Regional Director has filed an affidavit dated 30.8.2006 stating that he has no other comment to make but has stated that the petitioner companies be directed to produce the latest financial position. Except this, the Regional Director has no objection to the proposed Scheme of Amalgamation. The Official Liquidator has also filed in Company Petition No. 78 of 2006 (filed by the Transferor Company) his Report under the Second Proviso to Section 394(I) filed in September 2006 stating that the affairs of the Company have not been conducted in a manner prejudicial to the interests of its members or to public interest.

6. I heard Shri Ashok L. Shah, learned

advocate appearing with Shri Mrugesh Jani, learned advocate on behalf of the respective petitioners. I have also heard Shri PJ Malkan, learned Additional Central Government Standing Counsel. Considering the averments made in the Company Petitions, Report of the Official Liquidator, as well as the letter addressed by the Regional Director, Mumbai, and considering the proposed Scheme of Amalgamation, and considering the fact that the proposed Scheme of Amalgamation has been approved by all concerned, and it also appears to the Court that the amalgamation would be in the interests of the companies, their shareholders and creditors, the prayer in terms of Paragraph 17(a) of Company Petition No. 78 of 2006, and prayer in terms of Paragraph 17(a) of Company Petition No. 79 of 2006 are hereby granted.

7. These petitions are accordingly disposed

of. So far as costs to be paid to the learned Additional Central Government Standing Counsel, the same is quantified at Rs. 3500 per petition and the same may be paid to Shri Malkan, learned Additional Central Government Standing Counsel by the respective petitioners.

[M.R. Shah, J.]

RMR.